

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FREDERICK MARTIN,

Plaintiff,

v.

Case No. 24-cv-1467-bhl

NEIL THORESON, et al.,

Defendants.

SCREENING ORDER

Plaintiff Frederick Martin, who is currently serving a state prison sentence at the Milwaukee Secure Detention Facility and representing himself, filed a complaint under 42 U.S.C. §1983, alleging that his civil rights were violated. This matter comes before the Court on Martin's motion for leave to proceed without prepayment of the filing fee and to screen the complaint.

MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE

Martin has requested leave to proceed without prepaying the full filing fee (*in forma pauperis*). A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. §1915(b)(1). Martin has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. §1915(a)(2), and has been assessed and paid an initial partial filing fee of \$25.00. The Court will grant Martin's motion for leave to proceed without prepaying the filing fee.

SCREENING OF THE COMPLAINT

The Court has a duty to review any complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity, and dismiss any complaint or portion thereof if the prisoner has raised any claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A(b). In screening a complaint, the Court must determine whether the complaint complies with the Federal Rules of Civil Procedure and states at least plausible claims for which relief may be granted. To state a cognizable claim under the federal notice pleading system, a plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). It must be at least sufficient to provide notice to each defendant of what he or she is accused of doing, as well as when and where the alleged actions or inactions occurred, and the nature and extent of any damage or injury the actions or inactions caused.

“The pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* A complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged.” *Id.* at 556. “[T]he complaint’s allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555 (internal quotations omitted).

ALLEGATIONS OF THE COMPLAINT

Martin is an inmate at the Milwaukee Secure Detention Facility. Dkt. No. 1. Defendants are Wisconsin Division of Community Corrections Regional Chief Neil Thoreson, Parole Agent Sylvia Opin, Parole Agent Supervisor Rebecca Shult, John/Jane Does Department of Corrections records office, and John/Jane Does Oshkosh Correctional Institution records office. *Id.* at 1. Martin alleges that, in September and October 2022, he was incarcerated for 40 days past the termination of his sentence. *Id.*, at 2-3, ¶¶1-4 & 6. He states that “all parties named as defendants” in this lawsuit “were made aware of this miscalculation” and they “still showed deliberate indifference by failing to acknowledge and correct the incorrect release date information.” *Id.*, ¶¶2 & 5. For relief, Martin seeks monetary damages. *Id.* at 4.

THE COURT’S ANALYSIS

“To state a claim for relief under 42 U.S.C. §1983, a plaintiff must allege that he or she was deprived of a right secured by the Constitution or the laws of the United States, and that this deprivation occurred at the hands of a person or persons acting under the color of state law.” *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)).

Section 1983 limits liability to individuals who are personally responsible for a constitutional violation. *Burks v. Raemisch*, 555 F.3d 592, 593-94 (7th Cir. 2009). “An official satisfies the personal responsibility requirement of section 1983. . . if the conduct causing the constitutional deprivation occurs at [his] direction or with [his] knowledge and consent.” *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995) (quoting *Crowder v. Lash*, 687 F.2d 996, 1005

(7th Cir. 1982)). He or she “must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye.” *Id.* (quoting *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1988)).

Subjecting a prisoner to detention beyond the termination of his sentence violates the Eighth Amendment’s proscription against cruel and unusual punishment. *Childress v. Walker*, 787 F.3d 433, 439 (7th Cir. 2015). To state a claim, Martin must allege that he was incarcerated “for longer than he should have been due to the deliberate indifference of corrections officials.” *Id.* Deliberate indifference is a high standard, requiring “more than negligence or even gross negligence; a plaintiff must show that the defendant was essentially criminally reckless, that is, ignored a known risk.” *Figgs v. Dawson*, 829 F.3d 895, 903 (7th Cir. 2016). A corrections official may be deliberately indifferent when he or she is notified about an issue and takes action that is so ineffectual under the circumstances that it essentially amounts to doing nothing to resolve the issue. *Id.*

Martin alleges that he was incarcerated for 40 days past the termination of his sentence in September and October 2022. But he provides no specific details about when and how each individual defendant was notified of his circumstances; and what each individual defendant said or did in response to the information to show deliberate indifference towards Martin’s alleged incarceration past the termination of his sentence. Martin’s allegation that Defendants “were made aware of the miscalculation” but “still showed deliberate indifference” is nothing more than conclusory allegations of liability. *Ashcroft*, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). Indeed, absent specific allegations showing willful disregard of Martin’s circumstances, the mere existence of a sentence calculation error amounts to nothing more than negligence. *Figgs*, 829 F.3d at 903. Because Martin does not allege specific facts against each individual defendant from which the

Court can reasonably infer that they were deliberately indifferent towards his incarceration past the termination of his sentence, the Court will dismiss the original complaint for failure to state a claim.

The dismissal is not final, however. As a general matter, *pro se* plaintiffs are allowed at least one chance to amend an inadequately pleaded complaint. *See Boyd v. Bellin*, 835 F. App'x 886, 889 (7th Cir. 2021). The Court will therefore give Martin an opportunity to file an amended complaint to cure the deficiencies described above. The Court will enclose a guide for *pro se* prisoners that explains how to file an amended complaint that the Court can effectively screen. The Court also will include a blank prisoner amended complaint form. The Court will require Martin to use that form to file his amended complaint. *See Civ. L. R. 9* (E.D. Wis.). Martin is advised that the amended complaint must bear the docket number assigned to this case. The amended complaint replaces the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056–57 (7th Cir. 1998). In *Duda*, the appellate court emphasized that in such instances, the “prior pleading is in effect withdrawn as to all matters not restated in the amended pleading.” *Id.* at 1057 (citation omitted). If Martin files an amended complaint, the Court will screen it as required by 28 U.S.C. §1915A. If Martin does not file an amended complaint, the Court will likely dismiss this case.

CONCLUSION

IT IS THEREFORE ORDERED that Martin’s motion for leave to proceed without prepayment of the filing fee (Dkt. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that the original complaint is **DISMISSED** because it fails to state a claim. Martin may file an amended complaint that complies with the instructions in this

order **within 30 days of this order**. If Martin files an amended complaint by the deadline, the Court will screen it as required by 28 U.S.C. §1915A. If Martin does not file an amended complaint by the deadline, the Court will likely dismiss this case.

IT IS FURTHER ORDERED that the Clerk's Office mail Martin a blank prisoner amended complaint form and a copy of the guide entitled "Guide to Filing Prisoner Complaints Without a Lawyer in the United States District Court for the Eastern District of Wisconsin," along with this order.

IT IS FURTHER ORDERED that the agency having custody of Martin shall collect from his institution trust account the **\$325.00** balance of the filing fee by collecting monthly payments from Martin's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. §1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If Martin is transferred to another institution, the transferring institution shall forward a copy of this Order along with Martin remaining balance to the receiving institution.

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where Martin is located.

IT IS FURTHER ORDERED that plaintiffs who are inmates at Prisoner E-Filing Program institutions must submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the Court. The Prisoner E-Filing Program is mandatory for all inmates of Green Bay Correctional Institution, Waupun Correctional Institution, Dodge Correctional Institution, Wisconsin Secure Program Facility, Columbia Correctional Institution,

and Oshkosh Correctional Institution. Plaintiffs who are inmates at all other prison facilities must submit the original document for each filing to the Court to the following address:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

Martin is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Milwaukee, Wisconsin on February 11, 2025.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge